

No. 17361

**United States
Court of Appeals
for the Ninth Circuit**

STANDARD LUMBER CO., formerly PILOT
ROCK LUMBER CO.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the
Tax Court of the United States

FILED
JUL 31 1961

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Washington, D. C.
Attorneys for Respondent.



Tax Court of the United States

Docket No. 77900

STANDARD LUMBER CO., formerly PILOT
ROCK LUMBER CO.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

RESPONDENT'S COMPUTATION FOR ENTRY
OF DECISION

The attached computation is submitted, on behalf of the respondent, in compliance with the Court's opinion determining the issues in this case.

This computation is submitted without prejudice to respondent's right to contest the correctness of the decision entered herein by the Court, pursuant to the statute in such cases made and provided.

/s/ HART H. SPIEGEL, JDP
Chief Counsel,
Internal Revenue Service.

Of Counsel:

Melvin L. Sears,
Regional Counsel,
Walter I. Auran,
Attorney,
Internal Revenue Service,
484 Pittock Block,
Portland 5, Oregon.

Without prejudice to the right of appeal, it is agreed

that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled case.

/s/ WILLIAM H. KINSEY,
Counsel for Petitioner.

ARC-Ap:SF:P:FES

Computation Statement
Rule 50

In re: Standard Lumber Co., formerly
Pilot Rock Lumber Co.
Pilot Rock, Oregon
Docket No. 77900

Taxable Years Ending December 31, 1954 and December 31, 1955

Income Tax

<u>Year</u>	<u>Deficiency</u>
1954	\$208,092.16
1955	180,397.47
Total	<u>\$388,489.63</u>

Details supporting the above computations are set forth in the attached pages.

Standard Lumber Co., formerly
Pilot Rock Lumber Co.

Rule 50 Computation Statement

Taxable Year Ended December 31, 1954

Schedule 1

Adjustment to Taxable Income

Taxable income disclosed by statutory notice of deficiency dated September 11, 1958	\$857,988.01
As adjusted	<u>765,973.01</u>
Adjustment, reduction	<u><u>\$(92,015.00)</u></u>
Reduction:	
1. Interest income	<u><u>\$ 92,015.00</u></u>

Schedule 1(a)

Explanation of Adjustment

1. The opinion of The Tax Court of the United States promulgated October 31, 1960, is that the postponed interest for 1954 on the debentures of Oregon Fibre Products, Inc. did not constitute accrued interest taxable to petitioner in 1954. Therefore, taxable income is decreased by \$92,015.00. It is further held that during 1954 petitioner did not own stock in Oregon Fibre Products, Inc. possessing 80% of the voting power so as to entitle it to file a consolidated return with Oregon Fibre Products, Inc.

Schedule 2

Computation of Tax—1954

Taxable income as adjusted	\$765,973.01
Less excess of net long-term capital gain over net short-term capital loss	710,437.75
Balance	<u>\$ 55,535.26</u>
Partial tax (52% of \$55,535.26 minus \$5,500.00)	\$ 23,378.34
Plus 26% of \$710,437.75	184,713.82
Total Tax Liability	\$208,092.16
Assessed—Account No. 957111	None
Deficiency	\$208,092.16
Standard Lumber Co., formerly Pilot Rock Lumber Co.	

Rule 50 Computation Statement

Taxable Year Ended December 31, 1955

Schedule 3

Adjustment to Taxable Income

Taxable income disclosed by statutory notice of deficiency dated September 11, 1958	\$632,221.86
As adjusted	541,659.98
Adjustment, reduction	<u>\$ 90,561.88</u>
Reduction:	
1. Consolidation	<u><u>\$ 90,561.88</u></u>

Schedule 3(a)

Explanation of Adjustment

1. It is agreed, by stipulation of facts dated March 10, 1960, that petitioner and Oregon Fibre Products, Inc. are entitled to file a consolidated return for the entirety of the calendar year 1955. It is further agreed by stipulation of facts that the deduction of \$50,000.00 with respect to amortization of Masonite Licenses claimed by Oregon Fibre Products, Inc. in the consolidated return filed for the calendar year 1955 was properly disallowed in the statutory notice of deficiency. Therefore, income is decreased by \$90,561.88 computed as follows:

Net loss reported by Oregon Fibre Products, Inc. per 1955 consolidated return (exclusive of contributions in the amount of \$220.00)	\$443,512.92
Less disallowance of amortization on Masonite Licenses	50,000.00
Loss of Oregon Fibre Products, Inc. for 1955 as adjusted	<hr/> \$393,512.92
Loss allowed per statutory notice of deficiency	302,951.04
Adjustment	<hr/> <hr/> \$ 90,561.88

Schedule 4

Computation of Tax—1955

Taxable income as adjusted	\$541,659.98
Less excess of net long-term capital gain over net short-term capital loss	<u>721,589.87</u>
Balance	<u>\$ None</u>
Partial tax	\$ None
Plus 25% of \$721,589.87	<u>180,397.47</u>
Total tax liability	<u>\$180,397.47</u>
Assessed—Account No. CN-84-56	<u>None</u>
Deficiency	<u><u>\$180,397.47</u></u>

Received and Filed Dec. 21, 1960.

[Title of Tax Court and Cause.]

Filed October 31, 1960.

Docket No. 77900

1. Petitioner held 62 per cent of the outstanding stock of P corporation and trustees under a voting trust held 25 per cent. The voting trust was created in 1952 to continue for 20 years. A state law enacted in 1953 provided that voting trusts could be created for periods not to exceed 10 years. The trust was terminated by consent of the parties in 1955. Held: the state legislative enactment worked no suspension of the voting rights of the stock held in trust; petitioner did not own stock of P corporation possessing 80 per cent of the voting power in 1954 so as to entitle petitioner and P to file a consolidated return.

2. Petitioner held debentures of P corporation which bore 5 per cent interest payable semiannually. Petitioner entered a consent to modification of the indenture and a standby agreement so as to allow P corporation to postpone payment of the interest until full payment of a loan and interest to the RFC. Held, postponed interest for 1954 on the debentures of P corporation did not constitute accrued income taxable to petitioner in 1954.

William H. Kinsey, Esq., for the petitioner.

Walter I. Auran, Esq., for the respondent.

OPINION.

Black, Judge: Respondent has determined deficiencies in the income tax of petitioner for the years 1954 and 1955 as follows:

<u>Year</u>	<u>Deficiency</u>
1954	\$255,939.96
1955	180,397.47

All issues relating to the taxable year 1955 have been settled in the stipulation filed by the parties. Respondent conceded that petitioner was entitled to file a consolidated income tax return with Oregon Fibre Products, Inc., hereinafter referred to as Products, for the year 1955. Petitioner conceded that Products was not entitled to a deduction of \$50,000 on amortization of masonite. Effect will be given to this agreement under Rule 50.

Two issues as to the year 1954 are presented:

1. Whether petitioner owned directly stock of Products possessing at least 80 per cent of the voting power so as to entitle the two corporations to file a consolidated income tax return under the provisions of section 1504 (a)(2) of the Internal Revenue Code of 1954.

2. Whether, if it be determined that the corporations were not entitled to file a consolidated return, interest in the amount of \$92,015 on debentures of Products held by petitioner constituted accrued income taxable to petitioner.

The facts, all of which are stipulated, are included herein by this reference and may be summarized as follows:

Petitioner, formerly Pilot Rock Lumber Co., is a dissolved and liquidated corporation which was organized under the laws of the State of Oregon and had its principal office at Pilot Rock, Oregon. Liquidation of petitioner was completed on June 30, 1956. Products was incorporated under the laws of the State of Oregon, likewise having its principal office at Pilot Rock. Petitioner and Products maintained their books and reported income on an accrual method of accounting by calendar years, and timely filed a consolidated income tax return for 1954 with the district director of internal revenue, Portland, Oregon.

During 1954, Products had two classes of authorized stock, common and preferred. The preferred stock did not possess voting rights and was limited and preferred as to dividends. During the same year, petitioner held approximately 62 per cent of Products' outstanding common stock, trustees under a voting trust agreement held approximately 25 per cent, and all others held approximately 13 per cent.

The voting trust agreement under which the trustees held approximately 25 per cent of stock of Products outstanding during 1954 was created on November 3, 1952, and terminated by consent of all parties thereto by an agreement dated January 1, 1955. The voting trust agreement empowered the trustees to vote all the shares of Products held under the agreement. It further provided that the trust agreement should continue for 20 years from its date.

Section 57.175 of the Oregon Revised Statutes, a part of the Oregon Business Corporation Act which

was passed during the 1953 session of the Oregon legislature and became effective December 31, 1953, provides that a voting trust can be created for a period not to exceed 10 years.

On or about January 1, 1952, Products issued \$2,500,000 of 5 per cent sinking fund debentures. Petitioner purchased and held \$1,840,000 of these debentures. The debentures read, in material part, as follows:

Oregon Fibre Products, Inc. * * * promises to pay * * * on January 1, 1968 * * * the principal sum * * * and to pay interest thereon at the rate of five per cent (5%) per annum* * * semi-annually on the 1st day of July and the 1st day of January in each year, until payment of said principal sum has been made or duly provided for, subject to the limitation set forth in the next paragraph in regard to the postponement of interest payments. * * *

Interest shall accrue on this Debenture from the applicable date specified in the preceding paragraph, but payment of such interest may be postponed by the Company in the event, to the extent and during the period that payment of interest on the Debentures is prevented by the terms or operation of any loan, or any modification thereof, senior to the Debentures obtained by the Company (either before or after the date of the Indenture) from the Reconstruction Finance Corporation or from any other lender, public or private, for the purpose of financing the construction program under which the Company built and equipped or will build and equip its fiberboard plant. Such postponement of interest payments shall not constitute an Event of De-

fault as defined in the Indenture unless and until the Company does not pay such postponed interest on or before the third interest payment date following the date of the termination of any obstacle to the payment of such interest created by any such loan senior to the Debentures, but such postponed interest shall be paid in any event on or before January 1, 1958, and failure to pay such postponed interest, if any, on or before January 1, 1958, constitutes an Event of Default. Accrued interest, the payment of which is postponed in accordance with the foregoing, shall not be due within the meaning of any of the provisions of this Debenture or the Indenture until such time as the postponement of such interest constitutes an Event of Default.

On or about December 31, 1953, petitioner executed a "consent" with regard to the debentures of Products which read, in material part, as follows:

The undersigned holder * * * Of Oregon Fibre Products, Inc. Debentures * * * hereby consents to the execution of a Supplemental Indenture containing the provisions set forth below. * * *

(a) Notwithstanding any other provisions of this Indenture, including but not limited to the Events of Default and other provisions contained in Article Six of the Indenture, no principal or interest shall become due and payable upon the Consenting Debenture until the R.F.C. Loan has been fully paid. Until such time the Trustee shall take no action under the Indenture with respect to declaring the principal of any of the Consenting Debentures due and payable, or any other action which might otherwise be taken with respect to the preservation or protection of the rights of the Con-

senting Debentures. Any interest, the payment of which is postponed under the preceding sentence, shall be paid on or before the third interest payment date following the date upon which the R.F.C. Loan is fully paid, and failure to pay such postponed interest on or before such third interest payment date shall constitute an Event of Default. For the purposes hereof the R.F.C. Loan shall have been fully paid upon the date specified in written notice of such payment delivered to the Trustee by the R.F.C or by the substitute obligor in the event the R.F.C Loan has been refinanced.* * *

On or about December 31, 1953, petitioner also executed a "standby agreement" with respect to debentures of Products which read, in material part, as follows:

To induce the Reconstruction Finance Corporation (herein called "RFC") to make further disbursements of all or any part of the loan (herein called "Loan"), authorized to Oregon Fibre Products, Inc., * * * Borrower, (herein called "Debenture Holder") hereby represent, warrant and covenant * * * to and with each other and with the RFC with respect to the indebtedness * * * owing by Borrower to Debenture Holder * * * that:

1. Without the prior written consent of RFC, Debenture Holder will take no action to assert, collect or enforce all or any part of the Debenture.

2. Debenture Holder will promptly pay to RFC all amounts which may be received by Holder on account of the Debenture.

* * * * *

4. Debenture Holder will deliver to the Trustee under the Debentures or to Borrower and the Trustee or the Borrower will stamp or otherwise mark each Debenture with a legend as follows:

This Debenture and all rights represented thereby are subject to all the terms and conditions of a certain Standby Agreement made by and between the Debenture Holder and the RFC * * * which Standby Agreement provides, among other things, that the Company shall not pay any interest or principal on this Debenture Bond until payment in full of the RFC Loan in the amount of \$3,100,000.00 together with interest has been made * * *

* * * * *

7. This Standby Agreement and all obligations hereunder or with respect hereto, of Borrower and Debenture Holder, shall continue in full force and effect until payment in full of the indebtedness evidenced by the Note, notwithstanding any action which RFC or Borrower, or others, with the consent of RFC may take or refrain from taking with respect to such indebtedness.* * *

On or about January 7, 1954, the legend specified in the standby agreement was stamped on all of the debentures which petitioner held.

Products made no payments of interest to consenting debenture holders, including petitioner, during any of the periods here in question. In the Federal income tax return filed by petitioner for the calendar year 1954, interest on the debentures of Products was included in the amount of \$92,015.

The first issue presented is whether petitioner and Products were entitled to file a consolidated return for the year 1954 under the provisions of section 1504-(a)(2) of the 1954 Code.¹ Petitioner concedes that if all of the 120,000 outstanding shares of Products' common stock are counted, its 74,000 shares constitute a holding insufficient to qualify for the privilege of filing a consolidated return. It insists, however, that the voting rights of 30,000 shares under the voting trust agreement were suspended by operation of the Oregon Business Corporation Act during 1954, and that, therefore, its 74,000 shares possessed not 62 but 82 per cent of the voting power of all classes of stock. Respondent contends that no suspension of the voting rights of the stock held under the voting trust was worked by enactment of the Oregon Business Corporation Act, and that, therefore, petitioner did not own stock in Products possessing 80 per cent of the voting power during the taxable year 1954.

¹Sec. 1504. Definitions.

(a) Definition of "Affiliated Group."—As used in this chapter, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

* * * * *

(2) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

Prior to the enactment of the Oregon Business Corporation Act, the validity of voting trusts had been recognized by the courts of that state. *Curtze v. Iron Dyke Copper Min. Co.*, 81 Pac. 815. See also, *In re Pittock's Will*, 199 Pac. 633; *Smith v. Bramwell*, 31 P. 2d 647. The trust agreement was entered into on November 3, 1952. By its terms the voting trust was to continue for a period of 20 years. It is not contended nor do we find any warrant for holding that the agreement was not valid when executed.

In 1953, the Oregon legislature enacted a Business Corporation Act which provided that voting trusts might be created "for a period of not to exceed 10 years." Petitioner contends that the enactment cast "[a] definite pall of invalidity" upon the voting trust. Its position is stated in its brief, thus:

Pending judicial clarification of the impact of this statutory provision upon a pre-existing voting trust, the voting trustees could not validly exercise their voting rights under the voting trust. Neither could the voting trust certificate holders exercise same until the stock was issued in their names. In the absence of a judicial determination, the matter could be resolved only through a mutual termination of the voting trust agreement. * * *

We do not agree that the voting trustees could not exercise their voting rights. The rights and liability of the parties under the voting trust agreement attached prior to the enactment. For the Oregon Business Corporation Act to invalidate the trust or suspend any rights accruing thereunder would require the retrospec-

tive application of the act. As was set forth in *Hartley v. Utah Const. Co.*, 106 F. 2d 953, at p. 955:

The rule in Oregon is:

“* * * no act will be held to have a retrospective effect, unless the intention in that respect is clearly apparent in the statute itself. On the contrary, if it is fairly possible to restrain the operation of the statute so as to be prospective, that course will be adopted by the courts. * * *”

Libby v. Southern Pac. Co., 109 Or. 449, 452, 219 Pac. 604, 605, 220 Pac. 1017.

See also *Hoffart v. Lindquist*, 189 P. 2d at 592, 596, in which it is stated that “[i]t is well settled that legislation is usually construed as prospective and not retrospective.” We are not directed to, nor do we find, any provision of the act which would indicate that the Oregon legislature intended retrospective application of the act. Indeed, section 57.799 of the act, by providing that no right, liability or penalty created under the prior act should be affected by its repeal, indicates that the legislature intended only prospective operation of the act.

Both parties have discussed cases arising in jurisdictions other than Oregon to buttress their contentions. At least one case, *Christopher v. Richardson* (1959), 394 Pa. 425, 147 A. 2d 375, cited by petitioner is wholly inapplicable in that it involves a voting trust created after passage of the act restricting the duration of such trusts. More appropriate to the present issue are *Wolf v. Roosevelt*, 290 N. Y. 400, 49 N. E. 2d 502, and *Western Pac. R. Corporation v. Baldwin*,

89 F. 2d 269, in both of which cases it was concluded that acts limiting the duration of voting trusts were not to be applied to pre-existing trust agreements in jurisdictions recognizing the validity of such trusts at their creation.

We are satisfied that the voting trust in the present case was not invalidated by enactment of section 57.175 of the Oregon Business Corporation Act, and that there was no concomitant suspension of the voting rights of the 30,000 shares so held in trust. We hold, therefore, that during 1954, petitioner did not own stock in Products possessing 80 per cent of the voting powers so as to entitle it to file a consolidated return with Products.

The second issue presented is whether interest, in the amount of \$92,015, on debentures issued by Products and held by petitioner is properly includible in petitioner's income for the year 1954. Petitioner accrued the interest on its books for 1954 and prior years, but contends that such accrual was erroneous for 1954 in that payment of the interest was contingent upon payment of the RFC loan. Petitioner relies solely on the contingency which it claims arises from the modification of the trust indenture, debentures, and the standby agreement with the RFC and Products. Respondent maintains that petitioner in 1954 had a fixed and unconditional right to the interest although payment of the interest was postponed.

In *San Francisco Stevedoring Co.*, 8 T. C. 222, at p. 225, we set forth the principles of law applicable to a determination of the proper accrual of income as follows:

A taxpayer, using an accrual method of accounting, must accrue an item in the year in which the taxpayer acquires a fixed and unconditional right to receive the amount, even though actual payment is to be deferred. There must be no contingency or unreasonable uncertainty qualifying the payment or receipt. Income does not accrue to a taxpayer using an accrual method until there arises in him a fixed or unconditional right to receive it. * * *

The debentures as issued provided for postponement of interest payments in favor of the RFC loan, but the payments were required to be made no later than January 1, 1958. The debentures were, thus, similar to those involved in *Natco Corporation v. United States*, 240 F. 2d 398, a case cited on brief by both parties. Were we presented with an issue involving only the debentures as originally issued, we should have no difficulty sustaining respondent's determination. The situation would be substantially the same as it was in the *Natco Corporation* case.

Petitioner, however, consented to an amendment of the trust indenture, entered into a standby agreement with Products and the RFC, and suffered the alteration of the debentures in accordance with the agreement and consent. By the consent and standby agreement, petitioner relinquished its right to receive payment of principal or interest on the bonds until the RFC loan was fully paid, renounced its right to assert claims under or enforce the debentures, and agreed to pay over to the RFC any sums received under the debentures. Thus petitioner's right to receive payment of interest on the debentures was dependent upon full pay-

ment by Products of the principal and interest of the RFC loan. If any item is to accrue as income, "[t]here must be no contingency * * * qualifying the payment or receipt." San Francisco Stevedoring Co., cited and quoted *supra*.

We hold, therefore, that a contingency so qualified petitioner's right to receipt of the interest here in issue as to render it not properly includible in petitioner's income for the year 1954.

Decision will be entered under Rule 50.

Served Nov. 1, 1960.

Tax Court of the United States

Docket No. 77900

STANDARD LUMBER CO., formerly PILPOT
ROCK LUMBER CO.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the opinion of the Court filed October 31, 1960, and the agreed computation of the tax liabilities filed by the parties; and incorporating herein the facts recited in the computation as the findings of the Court, it is

Ordered and Decided: That there are deficiencies in income tax due from the petitioner for the taxable years 1954 and 1955 in the amounts of \$208,092.16 and \$180,397.47, respectively.

/s/ EUGENE BLACK,
Judge.

* * * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the agreed computation of the parties, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein, pursuant to the statute in such cases made and provided.

/s/ WILLIAM H. KINSEY,
Counsel for Petitioner.

[Seal]

/s/ HART H. SPIEGEL,
Chief Counsel,
Internal Revenue Service.

Entered Dec. 27, 1960.

Served Dec. 29, 1960.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW

Taxpayer, petitioner herein, by William H. Kinsey, counsel, hereby files its petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of the Tax Court of the United States on December 27, 1960, 35 T.C., No. 24, determining deficiencies in the petitioner's Federal Income Taxes for the taxable years 1954 and 1955 in the amounts of \$208,092.16 and \$180,397.47, respectively, and respectfully shows:

I.

The petitioner, Standard Lumber Co., formerly Pilot Rock Lumber Co., is a dissolved and liquidated corporation which prior to its dissolution was incorporated under the laws of the State of Oregon, having its principal office at Pilot Rock, Oregon.

That petitioner's Federal Income Tax Returns for the taxable years 1954 and 1955 were made to the Collector of Internal Revenue, or the District Director of Internal Revenue for the District of Oregon; the United States Court of Appeals for the Ninth Circuit is the proper court to review the aforesaid decision of the Tax Court of the United States, by virtue of Section 7482(b)(1) of the Internal Revenue Code of 1954.

II.

Nature of the Controversy

The controversy involves the proper determination of petitioner's liability for Federal Income Taxes for the taxable years 1954 and 1955. This in turn de-

pend upon whether or not the petitioner and Oregon Fibre Products, Inc., an Oregon corporation (hereinafter referred to as "Oregon Fibre") were entitled to file a consolidated income tax return for the calendar year 1954 under the provisions of Section 1504(a)(2) of the Internal Revenue Code of 1954, and more specifically, whether or not petitioner at all times during the calendar year 1954 owned stock of Oregon Fibre possessing at least 80% of the voting powers.

At all times during the calendar year 1954 there were issued and outstanding no more than 120,000 shares of the common stock of Oregon Fibre. Petitioner owned 74,000 of such shares and 30,000 of such shares were held by voting trustees under a 20 year voting trust agreement dated November 3, 1952. In 1953 the Oregon Legislature passed a law, to be effective December 31, 1953, that a voting trust agreement could be created for a period not to exceed ten years (ORS 57.175). On January 1, 1955, by mutual agreement, the voting trust agreement dated November 3, 1952, was terminated.

Petitioner took the position that the 30,000 shares subject to the voting trust were divested of voting power by the passage of ORS 57.175 since a "pall of invalidity" was thereby placed over said trust and that neither the trustees or equitable owners thereof had the right to vote said shares pending a judicial determination of the effect of ORS 57.175 on the validity of said voting trust. Therefore, petitioner, relying on its ownership of 74,000 of the remaining 90,000 shares of Oregon Fibre or 82% thereof, filed a consoli-

dated return with Oregon Fibre for the calendar year 1954.

The Commissioner of Internal Revenue took the position that the 30,000 shares subject to said voting trust were shares with voting power and that, therefore, petitioner did not own at least 80% of the voting power of the Oregon Fibre stock and was thus not entitled to file a consolidated return with Oregon Fibre for the calendar year 1954. Because of this determination, the Commissioner recomputed petitioner's tax liability for the calendar years 1954 and 1955 and determined income tax deficiencies against petitioner as follows:

1954	\$255,939.96
1955	180,397.47

The opinion of the Tax Court of the United States affirmed the findings of the Commissioner of Internal Revenue that petitioner was not entitled to file a consolidated return for the calendar year 1954, and held that ORS 57.175 worked no suspension of the voting rights of the stock held in trust and that petitioner did not own stock of Oregon Fibre possessions at least 80% of the voting power in 1954 so as to entitled petitioner and Oregon Fibre to file a consolidated return for that year. Thereafter, the Tax Court entered its decision under Rule 50 determining deficiencies in income tax due from the petitioner for the taxable years 1954 and 1955 in the amounts of \$208,092.16 and \$180,397.47, respectively.

III.

The petitioner, being aggrieved by the conclusions of law contained in the opinion of the Tax Court of the United States that petitioner was not entitled to file a consolidated return for the calendar year 1954, and being aggrieved by the decision of the Tax Court entered pursuant thereto, desires to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

/s/ WILLIAM H. KINSEY,
Counsel for Petitioner,
1001 Board of Trade Building,
Portland 4, Oregon.

State of Oregon, County of Multnomah—ss.

William H. Kinsey, being first duly sworn, says: That he is the counsel of record in the above-named cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petitioner and is familiar with the statements contained therein; that the statements made are true to the best of his knowledge, information and belief.

/s/ WILLIAM H. KINSEY,

Subscribed and sworn to before me this 20th day of March, 1961.

/s/ JOHN B. SOUTHERN,
[Seal] Notary Public for Oregon.

My Commission Expires Oct. 21, 1963.

Affidavit of Service by Mail Attached.

Received and Filed March 23, 1961.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following facts are true, and the same may be so considered and accepted by the court as offered in evidence by the parties; provided, however, that this stipulation is without prejudice to the right of either party to object to the materiality or relevancy of the facts hereinafter set forth:

1. Standard Lumber Co., formerly Pilot Rock Lumber Co., the petitioner herein, is a dissolved and liquidated corporation which prior to its dissolution was incorporated under the laws of the State of Oregon having its principal office at Pilot Rock, Oregon. The statement of intent to dissolve petitioner was filed with the Oregon Corporation Commissioner on June 27, 1956. Immediately prior to the filing of such statement of intent to dissolve, articles of amendment were filed with the Corporation Commissioner changing the name of petitioner from Pilot Rock Lumber Co. to Standard Lumber Co. so that petitioner was dissolved and liquidated under the name of Standard Lumber Co. The articles of dissolution for petitioner under the name of Standard Lumber Co. were filed with the Oregon Corporation Commissioner on July 17, 1956. The liquidation was completed on June 30, 1956. Under ORS Section 57.630 of the Oregon Business Corporation Act any action or proceeding by or against a desolved corporation may be prosecuted or defended by the corporation in its corporate name, and the Directors and of-

ficers have power to take such corporate action as shall be appropriate to protect such remedy, right or claim.

2. The books of petitioner were maintained and its Federal income tax returns were prepared on the accrual basis of accounting by calendar years.

3. Oregon Fibre Products, Inc. was incorporated under the laws of the State of Oregon, having its principal office at Pilot Rock, Oregon. Oregon Fibre Products, Inc. maintained its books and filed its Federal income tax returns on the accrual basis of accounting by calendar years.

4. Oregon Fibre Products, Inc. had two classes of authorized stock, preferred and common. There were 5,000 shares of the preferred stock outstanding at all times during the calendar year 1954. The preferred stock does not possess voting rights and is limited and preferred as to dividends. As of January 1, 1954, of the authorized shares of common stock of Oregon Fibre Products, Inc. there were 118,900 shares issued and outstanding, held as follows:

Pilot Rock Lumber Co.	74,000
E. C. Kerns, A. W. Moltke and Calvin N. Souther, Trustees under Voting Trust Agreement dated November 3, 1952	30,000
All other individuals	<u>14,900</u>
	118,900

As of December 31, 1954, all of the 120,000 shares of authorized common stock of Oregon Fibre Products, Inc. was issued and outstanding, held as follows:

Pilot Rock Lumber Co.	74,000
E. C. Kerns, A. W. Moltke and Calvin N. Souther, Trustees under Voting Trust Agreement dated November 3, 1952	30,000
All other individuals	16,000
	<hr/> 120,000

At all times during the calendar year 1954 there were issued and outstanding no more than 120,000 shares of the common stock of Oregon Fibre Products, Inc. At all times during the calendar year 1954 the petitioner owned 74,000 of such shares and 30,000 of such shares were held in the names of the voting trustees.

5. The Voting Trust under which the voting trustees held the 30,000 shares of common stock of Oregon Fibre Products, Inc. was created on November 3, 1952 pursuant to agreement, a copy of which is attached hereto as Exhibit 1-A. At all times subsequent to the creation of the Voting Trust, until terminated by agreement on January 1, 1955 hereinafter mentioned, the common stock of Oregon Fibre Products, Inc. issued to and held by the voting trustees was for the benefit of and for shares as follows:

Pilot Rock Lumber Co.	2,000
Harvey Gunderson	6,000
Carver Investment Company	22,000
	<hr/> 30,000

6. During the 1953 session of the Oregon legislature, an Act entitled "Oregon Business Corporation Act" was passed which was approved by the Governor on May 2, 1953 and filed in the office of the Secretary of State on May 4, 1953. This Act became Chapter 549 of Oregon Laws, 1953, which, by its terms, was to become effective on December 31, 1953. Section 32 of the Act, now Sec. 57.175 of Oregon Revised Statutes, provides that a voting trust can be created for a period not to exceed ten years. By agreement dated January 1, 1955 between Oregon Fibre Products, Inc., an Oregon corporation; E. C. Kerns, A. W. Moltke and Calvin N. Souther as Trustees of the voting trust; Pilot Rock Lumber Co., an Oregon corporation; Harvey J. Gunderson and Carver Investment Company, the voting trust created on November 3, 1952 was terminated.

7. Pursuant to the terms of an Indenture of Trust dated January 1, 1952 between Oregon Fibre Products, Inc. and The United States National Bank of Portland (Oregon), \$2,500,000 of Sinking Fund Debentures, bearing interest at 5% per annum, were issued by Oregon Fibre Products, Inc. on or about January 1, 1952. The Debentures were in the form of the attached Exhibit 2-B. Petitioner purchased, and, subsequent to its acquisition, held \$1,840,300 of the 5% Sinking Fund Debentures of Oregon Fibre Products, Inc.

8. On or about December 31, 1953 certain holders (but not all) of Oregon Fibre Products, Inc. Debentures executed a Consent to Amendment of Oregon

Fibre Products, Inc. Indenture which was in the form of the attached Exhibit 3-C. Petitioner executed such a Consent with respect to the \$1,840,300 of Oregon Fibre Products, Inc. Debentures held by it. On or about December 31, 1953 certain holders (but not all) of Oregon Fibre Products, Inc. Debentures executed a Standby Agreement with Oregon Fibre Products, Inc. which was in the form of the attached Exhibit 4-D. Petitioner executed such a Standby Agreement with respect to the \$1,840,300 of Oregon Fibre Products, Inc. Debentures held by it.

9. On January 7, 1954, Oregon Fibre Products, Inc. and The United States National Bank of Portland (Oregon) executed a Supplemental Indenture containing the provisions set forth in the attached Exhibit 3-C. On or about January 7, 1954, a legend was stamped on the face of each Debenture held by all parties executing the Consent to Amendment of Oregon Fibre Products, Inc. Indenture and the Standby Agreement, which legend was in the form set forth under paragraph 4 of the Standby Agreement. (Exhibit 4-D). Such a legend was stamped on all of the \$1,840,300 of Oregon Fibre Products, Inc. Debentures held by petitioner.

10. Oregon Fibre Products, Inc. made payments of the 5% interest on its Debentures to all non-consenting Debenture holders. No payments of interest were made to consenting Debenture holders. Oregon Fibre Products, Inc. accrued on its books interest at 5% with respect to all Debentures held by parties, including petitioner, executing consents and standby agree-

ments. In all Federal income tax returns filed by Oregon Fibre Products, Inc. deductions were claimed for all of the 5% interest, both paid and accrued.

11. Both prior to and during the calendar year 1954, petitioner accrued on its books interest computed at 5% on the \$1,840,300 of Oregon Fibre Products, Inc. Debentures it held, and included such amounts in its Federal income tax returns. In the Federal income tax return filed by petitioner for the calendar year 1954, accrued interest with respect to the \$1,840,300 of Oregon Fibre Products, Inc. Debentures was included in the amount of \$92,015.00.

12. On September 16, 1955, a U. S. corporation income tax return in the form of a consolidated return for the calendar year 1954, a copy of which is attached hereto as Exhibit 5-E, was filed by petitioner and Oregon Fibre Products, Inc. with the District Director of Internal Revenue at Portland, Oregon. On May 11, 1956, a U. S. corporation income tax return in the form of a consolidated return for the calendar year 1955 was filed by petitioner and Oregon Fibre Products, Inc. with the District Director of Internal Revenue at Portland, Oregon. Both of such returns were timely filed pursuant to extensions of time granted. A statutory notice of deficiency for the calendar years 1954 and 1955 was mailed to petitioner on September 11, 1958.

13. Should it be decided that petitioner and Oregon Fibre Products, Inc. are entitled to file a consolidated income tax return for the calendar year 1954, then and in that event there would be a consolidated

net operating loss for 1954 of \$500,651.77 which would qualify without modification as a consolidated net operating loss deduction allowable with respect to the consolidated income tax return of petitioner and Oregon Fibre Products, Inc. for the calendar year 1955. In addition, there would be unused charitable contributions for the calendar year 1954 of \$2,331.25 which would qualify as charitable contributions carryover to the consolidated return for the calendar year 1955, subject only to the 5% limitation.

14. It is stipulated that petitioner and Oregon Fibre Products, Inc. are entitled to file a consolidated return for the entirety of the calendar year 1955.

15. It is further stipulated that the deduction of \$50,000.00 with respect to amortization of masonite licenses claimed by Oregon Fibre Products, Inc. in the consolidated return filed for the calendar year 1955 has been properly disallowed as to such year by the respondent.

/s/ WILLIAM H. KINSEY,
Counsel for Petitioner,
Tenth Floor, Board of Trade Bldg.
Portland 4, Oregon.

/s/ HART H. SPIEGEL,
Chief Counsel,
Internal Revenue Service.

Filed March 15, 1960.

EXHIBIT 1-A

Voting Trust Agreement

Voting Trust Agreement made and entered into on or as of the 3rd day of November, 1952, between Oregon Fibre Products, Inc., an Oregon corporation (hereinafter referred to as the "Company"; and E. C. Kerns, A. W. Moltke and Calvin N. Souther (hereinafter referred to as the "Trustees"); and Pilot Rock Lumber Co., an Oregon corporation, common stockholder of the Company, and the common stockholders of the Company who may hereafter become parties hereto (Pilot Rock Lumber Co. and such other common stockholders being hereinafter referred to as the "Stockholders"),

Witnesseth:

Whereas, the common stock of the Company, par value \$1.00 per share (hereinafter referred to as the "common stock") is the only stock of the Company having voting power; and

Whereas, the Stockholders deem it necessary and advisable and for their best interest in order to secure continuity and stability of policy and management of the Company, to deposit with the Trustees the common stock owned by them; and

Whereas, the Trustees have consented to act under this agreement for the purposes herein provided;

Now, therefore, it is hereby agreed as follows:

1. Transfer of Stock to the Trustees. Pilot Rock Lumber Co., the stockholder executing this agreement, shall forthwith deposit with the Trustees certificates

representing 2,000 shares of common stock. Pilot Rock Lumber Co. and any other stockholders of the Company, may at any time hereafter deposit additional certificates for common stock with the Trustees, but no stockholder shall be required to deposit common stock hereunder unless the stockholder elects to do so. All such common stock certificates deposited with the Trustees hereunder shall be so endorsed, or accompanied by such instrument of transfer, as to enable the Trustees to cause such certificates to be transferred into the names of the Trustees. All certificates for common stock transferred and delivered to the Trustees hereunder shall be surrendered by the Trustees to the Company and cancelled, and new certificates therefor shall be issued in the name of the Trustees and delivered to them, whereupon the Trustees shall deliver to the Stockholders voting trust certificates for the common stock deposited by them. The Trustees shall hold in accordance with the terms hereof all common stock for which voting trust certificates are issued hereunder.

2. Scope of Agreement. Every person, firm or corporation receiving any voting trust certificate issued hereunder shall be bound by the provisions of this agreement with the same effect as if they had executed any amendments thereto, shall be filed in the office of the Company at Pilot Rock, Umatilla County, Oregon, and shall be open daily during business hours to the inspection of any voting trust certificate holder and any stockholder of the Company.

3. Voting Trust Certificates. The voting trust certificates to be issued and delivered by the Trustees in respect of the common stock as hereinbefore provided shall be in substantially the following form:

No. _____ Shares

Oregon Fibre Products, Inc.

Voting Trust Certificate for Common Stock

This certifies that _____ or registered assigns, is entitled to all of the benefits arising from the deposit with the Trustees under the voting trust agreement dated _____, 1952 of certificates for the above indicated shares of common stock of Oregon Fibre Products, Inc., an Oregon corporation, hereinafter called the "Company". This certificate and the holders hereof are subject to all of the terms and conditions of said voting trust agreement, copies of which are on file and may be inspected at the office of the Company in Pilot Rock, Umatilla County, Oregon, and the holder of this certificate is bound with like effect as if said voting trust agreement had been signed by the holder hereof.

The registered holder hereof, or assigns, is entitled to receive any and all dividends (except stock dividends) received by the Trustees upon the shares of common stock of the Company represented by this certificate. Dividends received by the Trustees in common or other stock of the Company having general voting powers shall be payable in voting trust certificates in form similar hereto. As provided in said voting trust agreement, the Trustees have and are entitled to exercise all voting rights in respect of the common stock of the

Company represented by this certificate, and no voting right whatsoever passes to the holder hereof, or assigns, except the right specified in said voting trust agreement to designate successor Trustees in the event successor trustees are not designated by the remaining trustees or the board of directors of the Company.

This certificate and any shares represented hereby are transferable on the books of the Trustees at the office of the Trustees (which office is the same as the office of the Company) by the holder hereof, either in person or by attorney duly authorized in accordance with the rules established for that purpose by the Trustees. The holder hereof agrees that delivery of this certificate, duly endorsed by the holder, shall vest title in the transferee; provided, that the Trustees may treat the registered holder hereof, or when presented duly endorsed in blank the bearer hereof, as the absolute owner hereof for all purposes whatsoever, and the Trustees shall not be bound or affected by any notice to the contrary. As a condition to making or permitting any transfer or delivery of voting trust certificates or common stock represented thereby, the Trustees may require the payment of a sum sufficient to pay, reimburse, and indemnify the Trustees for any stamp tax or other governmental charge in connection therewith.

This certificate shall not be valid for any purpose until duly signed by all of the Trustees or any two of them.

The word "Trustees" as used in this certificate means the original Trustees executing said voting trust agreement and any successor Trustee or Trustees acting under voting trust agreement.

In witness whereof the Trustees have signed this certificate on_____.

(Form of Assignment)

Trustees

For value received _____ hereby transfers and assigns unto _____ all rights in respect of _____ shares of the common stock of the Company represented by the within voting trust certificate, and hereby irrevocably constitute and appoint _____ attorney to transfer this certificate (or so much thereof as represents the number of shares of common stock of the Company transferred and assigned hereby) on the books of the Trustees, with full power of substitution.

Dated _____ (Seal)

4. Transfer of Certificates. Each voting trust certificate and all rights thereunder in respect of any number of the shares of (common) stock represented thereby shall be transferable at the office of the Trustees (which shall be the same as the office of the Company in Pilot Rock, Umatilla County, Oregon), on the books of the Trustees, by the registered holder thereof, whether in person or by attorney thereto duly authorized, upon surrender thereof according to rules established for that purpose by the Trustees. The Trustees shall not be required to recognize any transfer of a voting trust certificate not made in accordance with

the provisions hereof, unless the person claiming such ownership shall have produced indicia of title satisfactory to the Trustees, and shall in addition deposit with the Trustees indemnity satisfactory to them. The Trustees may treat the registered holder of any voting trust certificate as the owner thereof for all purposes whatsoever but the Trustees shall not be required to deliver common stock certificates upon termination of this agreement without surrender of any voting trust certificate or certificates representing such stock.

If a voting trust certificate is lost, stolen, mutilated or destroyed, the Trustees in their discretion may issue a duplicate of such certificate upon receipt of: (a) evidence of such fact satisfactory to them, (b) indemnity satisfactory to them, (c) the existing certificate if mutilated, and (d) their reasonable fees and expenses in connection with the issuance of a new trust certificate.

5. Dividends. The holders of the voting trust certificates shall be entitled to receive, and the Trustees shall pay to them, any and all dividends (except stock dividends provided for in the next sentence) received by the Trustees upon the shares of common stock represented by the voting trust certificates. If any dividend is paid by the Company, in whole or in part, in common stock or other stock of the Company having general voting powers, the Trustees shall hold, subject to the terms hereof, the certificates for such stock which are received by them on account of such stock dividend, and the holders of each voting trust certificate representing stock on which such stock dividend has been paid shall be entitled to receive a voting trust

certificate issued under this agreement for the number of shares received as such stock dividend. Holders entitled to receive the dividends discussed above shall be those registered as such on the transfer books of the Trustees at the close of business on the day fixed by the Company for the taking of a record to determine those holders of its stock entitled to receive such dividends.

In lieu of receiving dividends and paying the same to the holders of voting trust certificates pursuant to the preceding paragraph, the Trustees may instruct the Company in writing to pay such dividends to the holders of the voting trust certificates. Upon receipt of such written instructions the Company shall pay such dividends directly to the holders of the voting trust certificates. Upon such instructions being given by the Trustees to the Company, and until revoked by the Trustees, all liability of the Trustees with respect to such dividends shall cease. The Trustees may at any time revoke such instructions and by written notice to the Company direct it to make dividend payments to the Trustees.

6. **Subscription Rights.** In case any stock or other securities of the Company are offered for subscription to the holders of common stock deposited hereunder, the Trustees, promptly upon receipt of notice of such offer, shall mail a copy thereof to each of the holders of the voting trust certificates. Upon receipt by the Trustees, at least five days prior to the last day fixed by the Company for subscription and payment, of a request from any such registered holder of voting trust certificates to subscribe in his behalf, accompanied with the

sum of money required to pay for such stock or securities (not in excess of the amount subject to subscription in respect of the shares represented by the voting trust certificates held by such certificate holder), the Trustees shall make such subscription and payment, and upon receiving from the Company the certificates for shares or securities so subscribed for, shall hold, subject to the terms hereof, the certificates of such stock which are received by them on account of such subscription and shall issue to such holder a voting trust certificate in respect thereof if the same be common stock or other stock having general voting powers, but if the same be securities other than common stock or other stock having general voting power, the Trustee shall mail or deliver such securities to the certificate holder in whose behalf the subscription was made, or may instruct the Company to make delivery directly to the certificate holder entitled thereto.

7. Dissolution of Company. In the event of the dissolution or total or partial liquidation of the Company, whether voluntary or involuntary, the Trustees shall receive the moneys, securities, rights or property to which the holders of the common stock deposited hereunder are entitled, and shall distribute the same among the registered holders of voting trust certificates in proportion to their interests, as shown by the books of the Trustees, or the Trustees may in their discretion deposit such moneys, securities, rights, or property with any bank or trust company doing business in Portland, Oregon, with authority and instructions to distribute the same as above provided, and upon such deposit all further obligations or liabilities of the

Trustees in respect of such moneys, securities, rights, or property so deposited shall cease.

8. Reorganization of Company. The term "reorganization" used herein means the merger of the Company into another corporation or the merger of another corporation into the Company, the consolidation of the Company with another corporation or corporations, the transfer of all or substantially all of the assets of the Company to another corporation, the acquisition by the Company of the assets of another corporation, the recapitalization of the Company, or any combination of the foregoing. In the event of a reorganization of the Company, the term "Company" for all purposes of this agreement shall include any successor or component corporation in such reorganization. Subject to the provisions of paragraph 9 granting voting trust certificate holders the right to have their common stock appraised and paid for upon certain sales, mergers or consolidations, the voting Trustees may exchange in any reorganization all or any part of the common stock held hereunder for stock or securities of any successor or component corporation or of the Company, and the Trustees shall receive and hold under this agreement any common stock (or other stock having general voting rights) of any successor or component corporation or of the Company received on account of or in exchange for all or any part of the common stock held hereunder. Voting trust certificates issued and outstanding under this agreement at the time of the reorganization shall after the reorganization represent the number of shares of common stock specified in the voting trust certificates less any shares transferred in

the reorganization and plus any shares of stock received and retained by the Trustees in the reorganization on account of or in exchange for the shares of common stock represented by the certificates; or the trustees may, in their discretion, substitute for such voting trust certificates new voting trust certificates in appropriate form. Whether or not new voting trust certificates are substituted, the term "common stock" as used herein shall include any stock which may be received and retained by the Trustees in a reorganization on account of or in exchange for all or any part of the common stock held hereunder.

9. Voting Rights Of Trustees. The Trustees shall have the right to exercise, in person or by their nominees or proxies, all Stockholders' rights and powers in respect of all common stock deposited hereunder, including the right to vote thereon and to take part in or consent to any corporate or stockholders' action of any kind whatsoever. The Trustees shall have the power and authority to waive any and all rights and privileges which the Stockholders may possess under the Articles of Incorporation or By-Laws of the Company and under the corporation laws of Oregon. The decision or vote of a majority of the Trustees shall constitute the act, decision or vote of the Trustees. The voting trust certificate holders shall not be entitled to receive any notice of stockholders' meetings. The right to vote shall include the right to vote for the election of directors, and in favor of or against any resolution or proposed action of any character whatsoever, which may be presented at any meeting or which may require the consent of common stockholders

of the Company. Without limiting the generality of the foregoing, the Trustees shall have the right to vote for or against the acquisition of any assets by the Company, the mortgaging and pledging of all or any part of the property of the Company, the lease or sale of all or any part of the property of the Company, for cash, credit, securities or other property (or any combination of the foregoing) and for the dissolution of the Company, or the consolidation, merger, reorganization or recapitalization of the Company. In the event of a proposed sale of assets of the Company, consolidation or merger upon which the Stockholders would in the absence of this agreement be entitled to vote and have their shares appraised and paid for if they voted against such sale, consolidation or merger, the Company shall mail to the voting trust certificate holders a plan of the sale, consolidation or merger at least fifteen days prior to the stockholders meeting at which the Trustees will vote upon such sale, consolidation or merger, and any voting trust certificate holder objecting to such plan may file with the secretary of the Company his written objections thereto at least five days prior to the stockholders meeting at which the voting Trustees will vote upon the plan. Any voting trust certificate holder so filing a written objection with the secretary of the Company shall, if the sale, consolidation or merger is adopted, have the right to have the common stock represented by his voting trust certificate appraised and paid for as provided in the corporation laws of the State of Oregon for dissenting stockholders. Except as above provided no voting trust certificate holder shall have any rights as a dissenting Stockholder or otherwise in the event of a sale,

consolidation, merger, recapitalization or reorganization.

10. *Resignation Or Death Of Trustees.* Any Trustee (and any successor trustee) may at any time resign by mailing to the registered holders of voting trust certificates a written resignation to take effect ten days thereafter or upon the prior acceptance thereof. In the event of the death or resignation of any of the Trustees, the successor trustee to fill the vacancy thereby caused, shall be designated and appointed by the remaining Trustee or Trustees. If there is no remaining Trustee, or if the remaining Trustee or Trustees are unable to designate the successor, then the successor trustee shall be designated and appointed by a majority vote of the board of directors of the Company. If the board of directors is unable to designate the successor trustee by a majority vote, then the successor trustee shall be elected by the registered holders of voting trust certificates issued and outstanding under this agreement representing a majority of the number of shares of common stock standing in the name of Trustees hereunder, such election to take place at a meeting of the registered holders of voting trust certificates called upon ten days notice by the remaining Trustee or Trustees, if any, by the Company, or by the registered holders of voting trust certificates representing 25 per cent or more of the number of shares of common stock standing in the name of the Trustees hereunder.

The rights, powers and privileges of the Trustees named hereunder shall be possessed by the successor trustees, with the same effect as though such successors had originally been parties to this agreement.

11. Term Of Agreement And Distribution Of Common Stock Upon Termination. This agreement shall continue in effect for a period of twenty years from the date hereof (subject to extension as hereinafter set forth) but shall terminate at any time upon the execution and acknowledgement by all of the Trustees hereunder of a deed of termination which shall be filed in the office of the Company in Pilot Rock, Umatilla County, Oregon. After common stock has been deposited under this agreement such common stock cannot be withdrawn until this agreement is terminated unless the Trustees in their discretion by written statement release a portion of the common stock held hereunder and such release of a portion of the common stock shall not affect the balance thereof retained hereunder by the Trustees.

Within sixty days after the termination of this agreement the Trustees shall deliver to the registered holders of all voting trust certificates, certificates for the number of shares of common stock represented by the voting trust certificates, upon surrender thereof, properly endorsed. The Trustees may require the persons entitled to receive such certificates to pay a sum sufficient to cover any stamp tax or governmental charge in respect of the transfer or delivery of such certificates. If this agreement is extended as hereinafter provided the Trustees shall continue to hold, subject to all the terms hereof, all the shares of the common stock of the Company represented by the certificates held by the persons becoming parties to the extension agreement.

At any time within one year prior to the time of the termination of this agreement, or at any time within one year prior to the time of expiration hereof as theretofore extended, one or more holders of voting trust certificates hereunder may, by agreement in writing and with the written consent of the Trustees, extend the duration of this agreement for an additional period not exceeding five years. In the event of such extension the Trustees shall file in the office of the Company a copy of such extension agreement and of their consent thereto, provided, however, that no such extension agreement shall affect the rights of voting trust certificate holders not parties to such extension agreement (except assigns of parties to such extension agreement), and holders of voting trust certificates not parties to such extension agreement (except assigns of parties to such extension agreement) shall be entitled to receive the common stock represented by such voting trust certificates free from this voting trust.

12. Compensation and Reimbursement of Trustees. The Trustees shall serve without compensation. The Trustees shall have the right to incur and pay such reasonable expenses and charges, to employ and pay such agents, attorneys, and counsel as they may deem necessary and proper for carrying this agreement into effect. Any such expenses or charges incurred by and due to the Trustees shall be paid by the Company upon demand, and if not so paid may be deducted from the dividends or other moneys or property received by the Trustees on the common stock deposited hereunder. Nothing herein contained shall disqualify any Trustees

or successor trustee from serving the Company (or any of its affiliates) as an officer or director, or in any other capacity, and receiving compensation therefor.

12. Directors' Qualifying Shares. If any Stockholder is now a director of the Company or hereafter becomes a director of the Company, one share of common stock deposited by such Stockholder hereunder shall be issued in his name as a director's qualifying share in compliance with the corporation laws of Oregon, and such Stockholder shall endorse the certificate representing said one share in blank and deposit same with the Trustees and the Trustees shall hold such director's qualifying share hereunder in the same manner and subject to the same terms as the other shares of common stock of such Stockholder held hereunder to the extent permitted by the corporation laws of Oregon.

14. Notice. Any notice to or communication with the holders of the voting trust certificates hereunder shall be deemed to be sufficiently given or made if enclosed in postpaid envelope (regular, not registered mail) addressed to such holders at their respective addresses appearing on the transfer books of the Trustees and deposited in any post office or post office box. Every notice so given shall be effective whether or not received, and the date of mailing shall be the date such notice is deemed given for all purposes.

All distributions of cash, securities or other property hereunder by the Trustees to the holders of voting trust certificates, may be made, in the discretion of

the Trustees by mail (regular or registered mail, as the Trustees may deem advisable) in the same manner as hereinabove provided for the giving of notice to the holders of voting trust certificates.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed on or as of the date first hereinabove written.

OREGON FIBRE PRODUCTS, INC.

/s/ By E. C. KERNS, Pres.

Attest:

/s/ CALVIN N. SOUTHER,
Secretary.

PILOT ROCK LUMBER CO.

/s/ By E. C. KERNS, Pres.

Attest:

/s/ W. E. THALMAN,
Secretary.

Trustees:

/s/ A. W. MOLTKE,

/s/ E. C. KERNS,

/s/ CALVIN N. SOUTHER

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the documents submitted under this certificate, 1 to 20, inclusive, as called for by the Designations of Contents of Record on Review, are the original documents of record on file in my office, and a true copy of the docket entries as they appear in the case docketed at the above number, in which the petitioner in this Court has filed a petition for review.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 19th day of April, 1961.

[Seal]

HOWARD P. LOCKE,
Clerk of the Court

/s/ By MAYBELLE W. MUIR
Deputy Clerk.

[Endorsed]: No. 17361. United States Court of Appeals for the Ninth Circuit. Standard Lumber Co., Formerly Pilot Rock Lumber Co., Petitioner, v. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed: April 24, 1961.

Docketed: May 15, 1961.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

17361

Tax Court Docket No. 77900

STANDARD LUMBER CO., formerly
PILOT ROCK LUMBER CO.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Comes now Standard Lumber Co., formerly Pilot Rock Lumber co., Appellant above-named, and for a statement of points on which it intends to rely on this appeal, says:

(1) That the Tax Court erred in finding and holding that appellant was not entitled to file a consolidated return with Oregon Fibre Products, Inc., an Oregon corporation, for the calendar year 1954.

(2) That the Tax Court erred in finding and holding that there are deficiencies in income tax due from appellant for the taxable years 1954 and 1955 in the amounts of \$208,092.16 and \$180,397.47, respectively.

(3) That the Tax Court erred in rendering a decision in favor of the appellee and against the appellant Standard Lumber Co., formerly Pilot Rock Lumber Co.

(4) That the Tax Court erred in failing to enter a decision for appellant and against appellee, Commissioner of Internal Revenue.

Dated this 4th day of May, 1961, at Portland, Oregon.

/s/ WILLIAM H. KINSEY
Counsel for Appellant
1001 Board of Trade Building
Portland 4, Oregon

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 10, 1961. Frank H. Schmid,
Clerk.
